

Buhagiar J. : — We are concerned in this appeal with a piece of property held under Certificate of Title No. 7682, which the appellant agreed to buy from the first respondent. Another piece of property in contention between the same parties formed the subject matter of another case in which judgment was given by this Court (Civil Appeal No. 15 of 1952⁽¹⁾) and which is reported in (1953) M.L.J. 135.

The facts in this case are the same as in the other case except that in this case the agreement for the sale of the land in question between the first respondent and the appellant was made on the 20th January, 1948, that is, before a caveat was presented by the second and third respondents and registered against the Certificate of Title in question — this was on the 27th May, 1948.

In this appeal Mr. Charlesworth, for the appellant, relied only on one ground of appeal, that is, that contained in paragraph 8 of the Memorandum of Appeal, which is as follows :—

"8. In any event, since the Appellant, at the date of the Agreement sued on, namely the 20th January, 1948, had no notice of the equitable claims of the respondents to the property and no reason for supposing that the first respondent was not the legal and beneficial owner of the property, the appellant was entitled to be treated as a *bona fide* purchaser for value of the property without notice of the equity claimed by the remaining respondents."

Mr. Charlesworth, for the appellant, accepted (and it was so held in the other appeal on the same facts) that : (a) The land was purchased with partnership money;

(b) The land was partnership property; and

(c) That the 2nd, 3rd and 4th respondents had a registrable interest in the land.

He submitted that on the 20th January, 1948, the position as between the parties was as follows: the legal estate was in the 1st respondent in whose name the land was registered; the other respondents were beneficial owners and had an equitable estate in the land, and the appellant, by virtue of the agreement had also an equitable estate in the land. He argued that between these two equities, that is, that of the appellant and that of the 2nd, 3rd and 4th respondents, that of the appellant should prevail.

It is settled that the 2nd, 3rd and 4th respondents had a registrable interest, and if the appellant has also a registrable interest then the question of two equities arises. It is important in the first place to consider what was the effect of the agreement of the 20th January, 1948, by which the 1st respondent agreed to sell the land in question to the appellant. This agreement is a non-statutory and non-registrable instrument; such instruments do not create an estate or interest, legal or equitable, in the land but create a

contractual right, a personal right of action; it passes no actual interest in the land that can be called an equitable estate in the ordinary sense, but an equitable interest of a contractual nature under the instrument consisting of a right to be registered as the owner of the interest purported to be conferred by the instrument (vide *Hogg, Registration of Titles to Land*, p. 116). As Lord Dunedin stated in *Haji Abdul Rahman v. Mohamed Hassan*⁽²⁾: "The agreement is valueless as a transfer or burdening instrument, but it is good as a contract." This contractual right may be sufficient to give a person an 'interest' in the land for the purposes of protection by restrictive entry in the register; the claim to an interest in land arising out of the contract is sufficient to make it a caveatable interest and to support a caveat (*In re Registration of Caveat*⁽³⁾). The whole system of caveats is founded on the principle that they exist for the protection of alleged as well as proved interests and of interests that have not yet become actual interests in land, but a caveat, being in the nature of a statutory injunction, does not in itself make a claim or right either better or worse.

As stated by *Hogg (op. cit. p. 167)* "the effect of an unregistered instrument which purports, but is not allowed, to give an interest in land is comparable to the effect of a licence as distinguished from a lease. In questions of priority this distinction may be of vital importance."

In my opinion, therefore, the appellant's contractual right cannot have priority so as to override the registrable interest of the 2nd, 3rd and 4th respondents.

I would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.; Das & Co.*

SIN HUAT HIN TIN MINES LTD. v. LEE YAT KAI & ORS.

[O. C. J. (Wilson J.) May 7, 1954]

[K. L. — Civil Suit No. 147 of 1954]

Advocates and Solicitors Ordinance, 1947, s. 55(2) — Statute — Rule of construction of — Whether Federal Counsel can enter appearance on behalf of Government officials.

In this case the plaintiff sued one Lee Yat Kai and the Senior Inspector of Mines, Selangor, Negri Sembilan and Malacca and the Inspector of Mines, Kuala Lumpur. The Federal Counsel entered an appearance in the action on behalf of the two Government officials who were sued in their official capacity. The plaintiff applied to the Court by way of Summons in Chambers which was adjourned into Open Court for an order that the appearance entered on behalf of the second and third defendants

should be struck out. It was argued on behalf of the plaintiff that although the Federal Counsel has a right of audience before the Courts, he is not an advocate and solicitor and, therefore has no right to enter an appearance on behalf of the two defendants.

Held: s. 55(2) of the Advocates and Solicitors Ordinance, 1947, gives the Federal Counsel right to enter appearance in respect of any proceedings in any Court when so instructed by the Government.

Cases referred to:—

- (1) *Canada Sugar Refining Co. Ltd. v. The Queen* (1898) A.C. 735 at p. 741.
- (2) *Vacuum Oil Co. v. Secretary of State*, A.I.R. 1932 P.C. 168.
- (3) *Barker v. Edgar & Ors.* (1898) A.C. 748.
- (4) *Corporation of Blackpool v. Starr Estate Co. Ltd.* (1922) 1 A.C. 27.
- (5) *The Thames & Mersey Marine Insurance Co. Ltd. v. Hamilton, Fraser & Co.* (1887) 12 A.C. 484.

SUMMONS IN CHAMBERS adjourned into open Court.

Dato Sir Roland Braddell (Ng Ek Teong with him) for the plaintiff: Section 34 of the Civil Procedure Code (Cap. 7) provides the primary law concerning the entry of appearance in a suit in the High Court and must be read with 1932 Rule No. 1 sub-rr. 6, 12, 13 and 14. The Government Suits Enactment (Cap. 17), section 15 controls suits against Government officers sued in their official capacity. The Malayan Union Transfer of Powers and Interpretation Ordinance, 1946 (M.U. No. 2 of 1946), converts the Legal Adviser, F.M.S. (named in section 15 of the Government Suits Enactment) into the Attorney-General or Solicitor-General only. The Malayan Union Advocates and Solicitors Ordinance, 1947 (M.U. No. 4 of 1947) provides rights for Crown Counsel by section 55(2). Crown Counsel was replaced by Federal Counsel, a legal office created by the Federation Agreement, 1948, Clause 85(1); and sub-clause (4) of that Clause gives Federal Counsel a right of audience only. The Federation Agreement has the force of law and is a written law, see Malayan Union Interpretation and General Clauses Ordinance, 1948 (M.U. No. 7 of 1948 section 2(97)) as amended by section 2(c) (xvi) of F.M. Ordinance No. 41 of 1953. The Federation of Malaya Transfer of Powers Ordinance, 1948 (F.M. No. 1 of 1948) amends the Advocates and Solicitors Ordinance by replacing "Crown Counsel" by "Federal Counsel".

There is thus a succession of laws covering the subject matter and they have to be read so as to make a consistent whole, *Canada Sugar Co. v. The Queen*⁽¹⁾ at p. 741, "Every clause of a statute should be construed with reference to the context and the other clauses of

the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter." The relevant provisions of the Civil Procedure Code, the Government Suits Enactment, the Advocates and Solicitors Ordinance, and the Federation Agreement can be read as a consistent whole only by reading the provisions of section 55(2) of the Advocates and Solicitors Ordinance as confined to audience. The first two of these laws are the special ones governing suits against Government officers sued in their official capacity and the maxim *generalia specialibus non derogant* ought to be applied, *Barker v. Edgar*⁽³⁾ at pp. 742, 754; per Lord Haldane in *Blackpool Corporation v. Starr Estate*⁽⁴⁾ at p. 34. The words in section 55(2) of the Advocates and Solicitors Ordinance ought to be read *ejusdem generis*, per Lord Halsbury in *Thames & Mersey Insurance Co. v. Hamilton, Fraser & Co.*⁽⁵⁾ at p. 490.

C. M. Sheridan (*Federal Counsel*) for the 2nd and 3rd defendants argued that section 34 of the Civil Procedure Code (Cap. 7) is not exclusive by reason of the words "except where otherwise expressly provided by any law for the time being in force" in the section and submitted that section 55(2) of the Advocates and Solicitors Ordinance, 1947, as amended by the Transfer of Powers Ordinance, 1948, was an express contrary provision. Furthermore section 55(2), by expressly declaring the right of the Attorney-General, Solicitor-General and Crown (now Federal) Counsel to appear, clearly indicates the intention of the legislature, not only to save the rights previously vested in the Attorney-General and Solicitor-General, but also to confer similar rights on the new class of law officer, namely Crown Counsel.

The maxim *generalia specialibus non derogant* would not apply in this case as the Advocates and Solicitors Ordinance, 1947, which contains the specific provision, was passed subsequently to the Civil Procedure Code and Government Suits Enactment which contained the general provisions.

Cur. Adv. Vult.

Wilson J.:—This is a Chambers Summons which was adjourned into Court for the purpose of convenience. The plaintiff is suing Lee Yat Kai and the Senior Inspector of Mines, Selangor, Negri Sembilan and Malacca and the Inspector of Mines, Kuala Lumpur. Federal Counsel entered an appearance in the action on behalf of the two government officials. The plaintiff now asks that the appearance entered on behalf of the second and third defendants should be struck out.

Sir Roland Braddell has argued that, although Federal Counsel have a right of audience before the Courts, he is not an advocate and solicitor and, therefore, had no right to enter an appearance on behalf of the two defendants. The rights of a Federal Counsel are set out in section 55(2) of the Advocates and Solicitors Ordinance, 1947, as amended, and reads as follows:—

"55(2) Nothing herein shall affect the right (which is hereby declared) of the Attorney-General and of any person appointed to be Attorney-General, Solicitor-General or a Federal Counsel to appear and plead and to do all other things necessary in respect of litigation or proceedings in any Court in the Malayan Union in respect of any matter in which he or Deputy Public Prosecutor is so instructed to do by or on behalf of Government; and the Attorney-General or the Solicitor-General shall have such priority as is customary in England in the case of the Attorney-General and of the Solicitor-General respectively."

It has been argued that that sub-section does not stand alone and that a number of other Ordinances and the Federation of Malaya Agreement, 1948 must be taken into consideration in construing the sub-section. The following cases have been cited in support of this contention:—

Canada Sugar Refining Company, Ltd. v. The Queen⁽¹⁾. In that case Lord Davey stated: "Every clause of a statute should be construed with reference to the context and the other clauses of the Act."

Vacuum Oil Company v. Secretary of State⁽²⁾. In that case it was held that "the Court should not deal separately with the terms of an enactment which is in its nature composite."

Barker v. Edgar & Ors.⁽³⁾ Lord Hobhouse stated, at page 754:—

"The general maxim is, *Generalia specialibus non derogant*. When the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly."

Corporation of Blackpool v. Starr Estate Company⁽⁴⁾, Viscount Haldane stated, at page 34:—

"We are bound to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that whenever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared."

The Thames and Mersey Marine Insurance Company, Ltd. v. Hamilton, Fraser & Co.⁽⁵⁾. There, it was held that where the same words have for many years received a judicial construction it is not unreasonable to suppose that parties have contracted upon the belief that their words will be understood in what Lord Halsbury called "the accepted sense".

A passage was also quoted from *Craies on Statute Law*, 5th edition, page 205, in which it is stated that "if the general and specific enactments prove to be in any way repugnant to one another, the question will arise, which is to control the other?"

I cannot see that any of these authorities affect the proper construction of section 55(2) of Ordinance No. 4 of 1947. From the wording of this sub-section it would appear probable that some doubt was felt as to what were the privileges of the members of the Legal Department prior to the passing of this Ordinance, and for this reason the words "which is hereby declared" were inserted. The rights of Federal Counsel which are declared are "to appear and plead and to do all other things necessary in respect of litigation or proceedings in any Court . . . in respect of any matter in which he . . . is so instructed to do by or on behalf of Government." In this case Federal Counsel was instructed to enter an appearance for the second and third defendants by the Attorney-General. In my opinion it gives the Federal Counsel the right to enter an appearance in respect of proceedings in any Court when so instructed by the Government. It is true that in the Federation of Malaya Agreement Federal Counsel are only given the right of audience but I do not think that that provision, or the provisions of other later Ordinances which have been quoted to me, can be held to have whittled down clear rights given to Federal Counsel under the Advocates and Solicitors Ordinance.

It is to be observed that under Article 153 of the of the Federation of Malaya Agreement, the Court has no power to interpret the provisions of the Agreement and I have not been asked to refer the matter to the Interpretation Tribunal.

In my opinion my decision in this application relates only to the interpretation of section 55(2) of the Advocates and Solicitors Ordinance and does not involve an interpretation of the Federation Agreement.

The application must be dismissed with costs.

Application dismissed.

Solicitors for the plaintiff: *Braddell & Ramani.*

THAM FATT v. REGINA.

[A. Cr. J. (Murray-Aynsley C.J.) May 4, 1954]

[Singapore — Magistrate's Appeal No. 228 of 1953]

Evidence—Evidence Ordinance, s. 27—How much of information received from accused may be proved.